Via E--mail

April 14, 2011

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th and C Street, NW
Washington, DC 20551

RE: Docket No. R-1408; Dodd-Frank Act Modifications to FCRA Adverse Action Provisions; Proposed Rule Amending Regulation B

Ladies and Gentlemen:

This is in response to the above described notice of proposed rulemaking (the "Notice") published by the Board of Governors of the Federal Reserve System (the "Board"). The proposed rule implements amendments to the FCRA adverse action provisions contained in section 1100F of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

The National Council of Higher Education Loan Programs (NCHELP) appreciates the opportunity to comment on the notice of proposed rulemaking. NCHELP is a trade association that represents a nationwide network of lenders, secondary markets, loan servicers, guaranty agencies, collection agencies, postsecondary schools and others that administer loan programs that make loan assistance available to students and parents to pay for the costs of postsecondary education, including private education loans that would be subject to the proposed rule.

Our comments on the proposed rule are as follows:

1. Credit score factors. The Notice points out that the Dodd-Frank Act requires that adverse action notices include the numerical credit score used in making credit decisions and certain related information, including the key factors that adversely affected the credit score of the consumer in the model used. With respect to these factors, we suggest that the final rule state, either in the preamble, supplementary information or in Appendix C with the new sample notification forms, that the creditor may rely on the factors provided by the applicable credit reporting agency and has no obligation to question the factors provided. Additionally, the Board may consider providing guidance on what a creditor should do in the event, hopefully unlikely, that a consumer reporting agency fails to provide the factors or provides them in a manner that is not understandable.

2. Co-signer issues. Given the fact that many students applying for private education loans have thin credit histories, it is ordinary for student applicants to provide a co-signer to support the application. It is not uncommon for the co-signer's credit to be the principal factor in the credit decision. In light of the new Dodd-Frank requirement, explicit guidance on how to treat co-signers for FCRA/Regulation B purposes is needed. Specifically, we believe the proposal should be clarified to confirm that the co-signer's credit score and related information should not be provided to the applicant. Given privacy concerns, we believe this is the appropriate result. Guidance on how to treat co-applicants (co-borrowers) is also requested. We urge the Board to align the proposed adverse action regulation with the provisions of the proposed risk-based pricing regulation jointly published on March 15, 2011 by the Board and the Federal Trade Commission in terms of how co-signers (and co-borrowers) and their credit scores are to be treated.

3. Effective date. The Notice points out that the effective date of the applicable provisions of the Dodd-Frank Act is July 21, 2011. While we assume that the Board will act swiftly to publish a final rule, it should be noted that the guidance provided in the Notice was not published until March and is only in proposed form. Many creditors (or their servicers) will not have had sufficient time to make the necessary system changes to implement the provisions of the rule by July 21. This is particularly with respect smaller lenders and servicers. Many of our members making or processing private education loans are smaller non-profit and state agency lenders. These organizations, which generally have small IT staffs, will need time to program and test the system changes that will be required to implement the requirements. For this reason, while the final rule can have an effective date of July 21, 2011, we recommend that the final rule have a different compliance date for the requirement. We suggest a date six months thereafter, or January 21, 2012. This distinction between an effective date and a compliance date has been used in other situations (e.g. the final rule implementing amendments to Truth in Lending for private education loans and final regulations implementing the privacy provisions of the Gramm-Leach-Bliley Act).

Thank you again for the opportunity to comment on the proposed rule. Should you have any questions, please contact me at 202-721-1195 or shelly_repp@nchelp.org.

Sincerely,

SIGNED

Sheldon Repp
General Counsel